

CENTER FOR CIVIL JUSTICE

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Fighting poverty through advocacy, education, and empowerment.

Testimony to the House Committee on Families and Children's Services regarding HB 5242, 5243, 5244, and 5838

February 24, 2010

Introduction - CCJ

The Center for Civil Justice (CCJ) is a non-profit law firm with offices in Flint and Saginaw. We provide legal representation and advocacy to low income individuals and families in a 14-county region of mid-Michigan and the Thumb, including the urban areas of Flint, Saginaw, and Bay City, as well as surrounding rural areas. As part of our services, we regularly meet with and work closely with many non-profit human services providers, including faith-based and community-based organizations. We also work closely with other non-profit legal advocates for low income clients.

As part of our services, we regularly meet with and work closely with many human services providers, churches, and community organizations to help low-income persons move from welfare to work and to become more self-sufficient.

It is important to ensure that families who need CDC assistance from DHS will continue to be able to choose day care aides and relative providers they trust as the caregivers for their children, while at the same time working to protect the health and safety of children in these settings.

CCJ supports efforts to improve the quality of child care for low income children and to improve payment accuracy in the Child Day Care (CDC) subsidy program. However, we are concerned that some aspects of the bills will unnecessarily limit parental choice and make it difficult or impossible for parents to support their children through paid employment. Child care aides and relative care providers play a critical role in ensuring that low income parents can work or get the training they need to become self-sufficient.

Promoting parental choice and decision making about the child care that best meets their family's need is one of the core purposes of the federal Child Care Development Block Grant, which provides funding for the CDC program. See, e.g., 45 CFR 98.30. Many communities have a shortage of licensed child care providers that are willing to accept CDC payments, in large part because of the low hourly rates paid by CDC. In addition, many licensed providers require payment for fulltime care even when a child is absent or the parent's work hours fluctuate, in order to maintain their viability as a small business, but CDC will not pay for hours the child is not actually in care. Therefore, child care aides and relative caregivers, who do not go through formal licensing processes, are an important child care option for many parents, especially those who need flexibility in the hours and days that child care is provided.

A child care aide who provides care in the children's home, or a relative who cares for the children in the relative's home, is the only viable option for many low-income parents --

especially parents who work night or evening shifts; single parents juggling multiple part-time jobs with constantly changing hours; parents of children with disabilities that make it particularly difficult to find appropriate, licensed childcare providers; and parents who do not own a vehicle and must rely on public transportation that can add many hours to the time they are away from their children, and their children are away from home, if they must commute not only to and from work but also to and from licensed child care providers.

HB 5838 and HB 5244

1. Child care provider-to-child ratios should be the same for child care aides and relative providers as they are for other types of providers

HB 5838 at subsection (A) and HB 5244 at subsection (15) suggest that day care aides and relative care providers may not be enrolled to receive CDC payments if they are caring for more than four children at a time. **This limit is inconsistent with the staffing ratios that apply in licensed child care settings, where a ratio of 6 to 1 is permitted, Mich Admin Code R 400.1910. We are not aware of any compelling reason for this discriminatory treatment.** Accordingly, we suggest that HB 5838 be amended to ensure that all providers receiving CDC payments receive consistent treatment.

2. A consistent definition of "relative" should be used

HB 5838 at subsection (B) suggests that day care aides and relative care providers may not be enrolled to receive CDC payments unless they meet a definition of a relative caregiver that is more restrictive than the definition used in MCLA 722.111(s), Mich Admin Code R 400.1901(y), and DHS policy (BEM 704 p.3), as well as HB 5244 at subsection (15)(C). The use of an inconsistent definition will create confusion about the rights and responsibilities of relative providers who are exempt from licensing but are not within the definition set by HB 5838. We suggest that the definition be made consistent and include:

- Grandparent, step-grandparent, great-grandparent, step-great-grandparent.
- Aunt, step-aunt, great-aunt, step-great-aunt.
- Uncle, step-uncle, great-uncle, step-great-uncle.
- Sibling, step-sibling.

HB 5242

1. A Statutory Mandate for Annual Training is Premature

The Department of Human Services now mandates that providers participate in a 6 hour Orientation, which includes training on first aid and CPR, nutrition, health and safety, shaken baby syndrome, and safe sleep practices, before any new providers can be enrolled to receive child care payments from the Department. All current providers must complete Orientation no later than September 19, 2010. In addition, DHS is incentivizing participation in additional training by providing a 25-cents-per-hour raise to providers who participate in 10 hours of training.

We suggest that the Committee on Families and Children's Services require DHS to report on the outcomes of their new policy and make recommendations based on experience with the current policy before imposing new, statutory requirements.

HB 4243

We oppose HB 4243, which prohibits day care payments to any day care aide who lives with child, because – as currently written – it is overbroad. We suggest that payments be prohibited to biological parents and their spouses, and other applicants for CDC (who must be a parent or someone acting as a parent) and their spouses. Other individuals (such as an aunt or a friend) who are not legally obligated to support a child, should be able to be paid for their work if they forgo other employment in order to provide care for a child while the primary caregiver goes to work. The bill as currently written discourages childcare arrangements which can be advantageous and flexible for both parents and aides, especially for children whose parents work evening or night shifts, and in rural areas where transportation is a problem.

Suggested new language:

SEC. 74C. A DAY CARE AIDE IS NOT ELIGIBLE TO RECEIVE A CHILD CARE SUBSIDY UNDER THIS ACT IF THE DAY CARE AIDE AND THE CHILD RESIDE IN THE SAME HOUSEHOLD AND THE DAYCARE AIDE IS THE CHILD'S PARENT, AN APPLICANT FOR CHILD DAY CARE ASSISTANCE FOR THE CHILD, OR THE SPOUSE OF EITHER.

HB 5244

1. Costs of fingerprinting should not be imposed on underpaid Child Care Aides and Relative Providers

Imposing or shifting the costs of criminal background checks to individuals seeking CDC payment as child care aides or relative care providers will further reduce the available pool of child care providers and unnecessarily restrict parental choice. Many of the day care aides and relative providers who are willing to accept CDC payments (which are well below market rate) are low-income themselves, or are living on fixed incomes. We understand that fingerprinting costs in the range of \$60 to \$80. This cost is prohibitive for aides and relative providers -- who are paid less than \$2.00 per hour per child under the CDC program.¹ In addition, many potential providers will be unwilling to incur the inconvenience and embarrassment of being fingerprinted by law enforcement officials. **The legislature should provide funding for DHS**

¹ CDC payments vary depending on the age of the child, the type of provider, and the county where the child lives. Relative care and Aide provider rates are \$1.60 per hour for children age 2 ½ or older, and \$1.85 per hour for a child under age 2 ½. This means most Relative Providers and Aides are paid less than minimum wage.

to pay the cost of the background checks for aides and relatives. Alternatively, it should give parents the option to waive any background check that requires the aide or relative provider to pay a fee.²

In addition, DHS criminal background checks currently are being used to impose lifetime CDC disqualifications on child care aides and relative providers who were convicted of offenses that bear no relation to child welfare or safety, or which were committed many years or decades in the past, often regardless of the evidence of rehabilitation and good moral character in intervening years. (In contrast, in the long term care setting, only a handful of offenses result in lifetime disqualification from employment; other offenses result in disqualifications ranging from one to fifteen years.) We encourage DHS to work with advocates, employment and training service providers, prison re-entry and rehabilitation experts, and others to narrow the offenses that will trigger disqualification and to limit the length of disqualifications for less serious and less relevant offenses. We also continue to encourage DHS to work with advocates to improve the appeal process for providers to contest disqualifications.

2. Criminal penalties should not be imposed for failing to meet proposed reporting requirements

HB 5244 would not only require providers to report to DHS within 3 days of being arraigned for certain alleged crimes, but also would impose stiff criminal penalties for failure to report. Under the bill, an individual who is wrongly accused and has charges dismissed after arraignment could nevertheless end up with a criminal record for failing to report to DHS under this bill. The criminal penalties are unnecessary and unnecessarily harsh.

DHS currently performs an initial criminal history check on 5 data base systems before a provider may be enrolled to receive CDC payments. For Relative Care providers, DHS checks all adults in the provider's household. In addition, DHS does **monthly**, automated checks of the five systems on all enrolled providers. The five systems are: ICHAT, OTIS, PSOR, NSOPR, and FIL. ICHAT maintains records of arrests, warrants, and arraignments. Thus DHS is already taking necessary steps to obtain timely information regarding criminal charges against CDC providers.

In addition, HB 5244 includes a provision for notification to DHS when the fingerprints of a person arrested match the fingerprints of a provider whose prints have been submitted under this legislation. Thus, DHS will receive timely independent notification of an arrest.

Civil penalties, including penalties affecting eligibility for CDC payments, may be more appropriate in light of the other, adequate safeguards in place. It is unnecessary to impose criminal penalties for failure to report an arraignment.

² Aides and relative providers usually are well known to the parent who chooses them as a child care provider. Although they are classified as child care aides because care is provided in the child's home, some day care aides are relatives, too.